

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MALONE, *et al.*,

Plaintiffs,

v.

CLARK NUBER, P.S., *et al.*,

Defendants.

Case No. C07-2046RSL

ORDER AWARDING
COSTS AND FEES

On May 23, 2008, the Court granted the motion of Carol Petraglia, the former executrix of the estate of Peter Molyneux, to strike the declaration of service which purported to represent proof of service on Molyneux. Among other things, the Court found,

Plaintiffs acknowledge that they knew of Molyneux's death before they filed their complaint and that they erred in failing to correct the claims before they were filed. Nevertheless, they refused to dismiss him as a party, filed a declaration of service, and opposed the obviously meritorious motion to strike the declaration of service.

Order Granting Motion to Strike Declaration of Service, (Dkt. #111) at p. 3.

The Court invited Petraglia to file a statement of her reasonable costs and fees incurred. Petraglia states that she has incurred \$8,932.64 in fees and costs, including time her counsel spent attempting to negotiate a settlement with plaintiffs and drafting and filing the motion to strike the declaration of service. Ordinarily, the Court would not award a party its fees incurred

1 in settlement negotiations. However, but for plaintiffs' misguided decision to try to effect
2 service through her, Petraglia would not have been part of this lawsuit or had to incur the fees
3 and costs at issue. In addition, Petraglia's counsel acted appropriately in attempting to resolve
4 the issue amicably; the Court encourages those efforts.

5 Moreover, the amount of fees sought and counsel's hourly rates are reasonable. The
6 declarations filed with the Court show that the time spent was necessary to achieve a favorable
7 result for Petraglia and necessitated by plaintiffs' conduct. Accordingly, the Court AWARDS
8 Petraglia her fees and costs incurred in the amount of \$8,932.64.

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10 DATED this 30th day of June, 2008.

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14 Robert S. Lasnik
15 United States District Judge
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